

Part III - Administrative, Procedural, and Miscellaneous

Request for Comments Regarding Financial Services Income Under Section 904(d)

Notice 2007-58

The Internal Revenue Service (IRS) and the Treasury Department are studying the appropriateness of updating Treasury Regulation §1.904-4(e) in light of recent statutory changes. This notice invites public comments relating to the definitions of financial services income, active financing income or financial services entities under that regulation.

BACKGROUND

Section 404 of the American Jobs Creation Act of 2004, Public Law 108-357, 118 Stat. 1418 (October 22, 2004) (AJCA) generally reduced the number of separate foreign tax credit limitation categories under section 904(d) of the Internal Revenue Code (the Code) from eight to two, effective for taxable years beginning after December 31, 2006. As a result, income which would have been assigned to the separate category for financial services income had such income been earned in a taxable year beginning before January 1, 2007, is now treated as general category income. However, this applies only in the case of a member of a financial services group or any other person predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. Section 904(d)(2)(C)(i). Treasury Regulation §1.904-4(e)(3)(i) currently provides that a person is considered to be predominantly engaged in the active financing business for any year if for that year at least 80 percent of its gross income is active financing income, as defined in Treasury Regulation §1.904-4(e)(2).

Section 401 of the AJCA modifies present-law interest expense allocation rules under section 864 of the Code to provide taxpayers with a one-time election under new section 864(f) to allocate and apportion interest expense of the domestic members of a worldwide affiliated group (as defined in new section 864(f)(1)(C)) on a worldwide-group basis. Taxpayers are allowed to apply present-law financial institution group rules to treat certain financial institutions as a separate affiliated group for purposes of interest allocation under the worldwide fungibility approach. In the alternative, section 401 of the AJCA also provides a one-time election under section 864(f)(5) to expand the present-law financial institution group to include “financial corporations.” A financial

corporation, as defined in new section 864(f)(5)(B), is any corporation if at least 80 percent of its gross income is financial services income, as described in section 904(d)(2)(D)(ii) of the Code and the regulations thereunder, derived from transactions with persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the corporation. This provision is effective for taxable years beginning after December 31, 2008.

The IRS and the Treasury Department believe that it is appropriate to review the provisions relating to financial services income and entities in Treasury Regulation §1.904-4(e) in light of the amendments to the foreign tax credit rules in the AJCA.

REQUEST FOR COMMENTS

The IRS and the Treasury Department request comments specifically on whether any items currently listed as active financing income under Treasury Regulation §1.904-4(e)(2)(i) are over-inclusive or under-inclusive and whether any of the listed items should be clarified as applying only to transactions involving customers. More generally, comments are welcome as to whether any other provisions of Treasury Regulation §1.904-4(e) relating to the definitions of financial services income, active financing income or financial services entities should be modified to take into consideration recent statutory changes or any changes in the nature of financial services that have taken place since this regulation was originally published.

Comments should be submitted on or before September 10, 2007, and should include a reference to Notice 2007-58. Send submissions to CC:PA:LPD:PR (Notice 2007-58), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered **Monday through Friday** between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2007-58), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044, or sent electronically, via the following e-mail address: Notice.comments@irscounsel.treas.gov. Please include "Notice 2007-58" in the subject line of any electronic communication. All material submitted will be available for public inspection and copying.

DRAFTING INFORMATION

The principal author of this announcement is Jeffrey L. Parry of the Office of Associate Chief Counsel (International). For further information regarding this announcement contact Jeffrey L. Parry at (202) 622-3850 (not a toll-free call).